

(Original, Entered into force December 1, 1987)

Convention between
the Republic of Korea and the Republic of Austria
for the Avoidance of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income and on Capital
(Amendment)

signed at Seoul May 28, 2001
Entered into force March 30, 2002

The Republic of Korea and the Republic of Austria,
Desiring to amend the Convention between the Republic of Korea and the Republic of Austria for
the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on
Income and on Capital signed at Seoul on the 8th Day of October 1985(hereinafter referred to as
"the Convention")

Have agreed as follows:

Article 1. **【Personal Scope】** [2002.03.30]

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2. **【Taxes Covered】** [2002.03.30]

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are:

a) in the case of Korea:

i) the income tax;
) the corporation tax;
) the inhabitant tax where charged by reference to the income tax or the corporation tax;
) the special tax for rural development where charged by reference to the income tax or the corporation tax;

(hereinafter referred to as "Korean Tax");

b) in the case of Austria:

) the income tax (die Einkommensteuer);
) the corporation tax (die Körperschaftsteuer);
) the land tax (die Grundsteuer);
) the tax on agricultural and forestry enterprises (die Abgabe von land-und forstwirtschaftlichen Betrieben);
) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstücken);

(hereinafter referred to as "Austrian Tax")

4. This Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3. **【General Definitions】** [2002.03.30]

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and sea-soil and their natural resources may be exercised;

b) the term " Austria" means the Republic of Austria;

c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Austria, as the context requires ;

d) the term "tax" means Korean tax or Austrian tax, as the context requires;

e) the term "person" includes an individual, a company and any other body of persons;

f) the term "company" means any body corporate or any entity which is treated as a body corporate for

tax purposes;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "nationals" means;

i) all individuals possessing the nationality of a Contracting State;

ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

j) the term "competent authority" means;

() in the case of Korea, the Minister of Finance or his authorized representative;

() in the case of Austria, the Federal Minister of Finance

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

Article 4. **【Resident】** [2002.03.30]

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where, by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States, or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;

d) if he is a national of both states or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5. **【Permanent Establishment】** [2002.03.30]

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
- f) the maintenance of a fixed place of business solely for any combination of activities

mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of the paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6. **【Income from Immovable Property】** [2002.03.30]

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent

personal services.

Article 7. **【Business Profits】** [2002.03.30]

1. The profits of an enterprise of a Contracting State shall be taxable only in that State, unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.
7. The term " profits" as used in this Article includes the profits derived by any partner from his participation and, in the case of Austria, from a participation in a sleeping partnership (Still Gesellschaft) created under Austrian law.

Article 8. **【Shipping and Air Transport】** [2002.03.30]

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.
3. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of Austria shall also be exempt from the

value added tax in Korea and, if an enterprise of Korea, shall also be exempt from any tax similar to the value added tax in Korea which may hereafter be imposed in Austria.

Article 9. **【Associated Enterprises】** [2002.03.30]

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10. **【Dividends】** [2002.03.30]

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other right, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends,

being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. **【Interest】** [2002.03.30]

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

a) interest arising in a Contracting State and received by the Government of the other Contracting State including a political subdivision or a local authority thereof or the central Bank of that other Contracting State shall be taxable only in that other Contracting State.

b) Interest arising in a Contracting State in respect of loans or credits made or guaranteed,
- in the case of Korea, by the Export Import Bank of Korea;
- in the case of Austria by the Osterreichische kontrollbank Aktienge-sellschaft :and paid to a resident of the other Contracting State shall be taxable only in that other State.

c) Interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or paid in connection with the sale on credit of any merchandise by one enterprise to another enterprise shall be taxable only in the Contracting State of which beneficiary is a resident.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the

debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State.

Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12. **【Royalties】** [2002.03.30]

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 2 per cent of the gross amount of such royalties which are paid for the use of, or the right to use, industrial, commercial or scientific equipment; and
- b) 10 Per cent of the gross amount of such royalties in all other cases.

3. The term "royalties", as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or

for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. **【Capital Gains】** [2002.03.30]

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 or from the alienation of shares or other rights of a company the assets of which consist principally, directly or indirectly, of immovable property, may be taxed in the other State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is a resident.

4. Gains derived by a resident of a Contracting State from the alienation of shares in a company which is a resident of the other Contracting State may be taxed in that other State, if the resident

holds or held at anytime during the previous two years more than 25 percent of capital in the company. But the tax so charged shall not exceed 10 percent of such gains.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. **【Independent Personal Services】** [2002.03.30]

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may be taxed in the other Contracting State:

a) if he has a fixed base regularly available to him in the other State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that State; or

b) if the recipient is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in the taxable year concerned.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

3. Deleted (March 30, 2002)

Article 15. **【Dependent Personal Services】** [2002.03.30]

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

Article 16. **【Directors' Fees】** [2002.03.30]

Directors' Fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17. **【Artistes and Athletes】** [2002.03.30]

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in the that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18. **【Pensions】** [2002.03.30]

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19. **【Government Service】** [2002.03.30]

1. a) Remuneration, other than a pension, paid by a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- i) is a national of that State, or
- ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or

subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

4. The provisions of paragraphs 1 and 2 of this Article shall likewise apply in respect of remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea, the Korea Development Bank and the Korea Trade-Investment Promotion Agency and, in the case of Austria, in respect of remuneration or pensions paid to the Austrian Foreign Trade Commissioner for Korea and to the members of the staff of the Austrian Foreign Trade Commissioner for Korea.

Article 20. **【Students】** [2002.03.30]

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

Article 21. **【Other Income】** [2002.03.30]

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 22. 【Capital】 [2002.03.30]

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State
4. All other elements of capital of a resident of a Contracting States shall be taxable only in that State.

Article 23. 【Relief from Double Taxation】 [2002.03.30]

1. In the case of a resident of Korea, double taxation shall be avoided as follows:
Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Austrian tax payable(excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Austria and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Austria shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Austria bears to the entire income subject to Korean tax
2. In the case of a resident of Austria, double taxation shall be avoided as follows:
 - a) Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Convention may be taxed in Korea, Austria shall subject to the provisions of subparagraphs b) and d) exempt such income or capital from tax.
 - b) Where a resident of Austria derives items of income which, in accordance with the provisions of Articles 10, 11, 12 and paragraph 4 of Article 13 may be taxed in Korea, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Korea; the same applies to the alienation of shares or other rights as mentioned in paragraph 1 of Article 13. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Korea.
 - c) For the application of subparagraph b), the term "tax paid in Korea" in respect of dividends, interest and royalties and gains from the alienation of shares shall, notwithstanding any tax exemption or reduction under Korean laws or this Convention, be deemed to have been 15 percent

of the gross amount of such dividends, interest and royalties, or of such gains.

d) Where in accordance with any provisions of the Convention income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Article 24. **【Non-Discrimination】** [2002.03.30]

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprise of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents .

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25. **【Mutual Agreement Procedure】** [2002.03.30]

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26. **【Exchange of Information】** [2002.03.30]

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of

that or of the other Contracting State ;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).

Article 27. **【Diplomatic Agents and Consular Officers】** [2002.03.30]

Nothing in this Convention shall affect the fiscal privileges of persons under the general rules of international law or under the provisions of special agreements.

Article 28. **【Entry into Force】** [2002.03.30]

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at as soon as possible.

2. The Convention shall enter into force on the first day of the third month next following that in which the exchange of the instruments of ratification takes place and its provisions shall have effect

a) in Korea :

() in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January of the calendar year next following that in which the exchange of the instruments of ratification takes place ; and

() in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that in which the exchange of the instruments of ratification takes place;

b) in Austria :

() in respect of tax withheld at the source on amounts paid on or after the first day of January in the calendar year next following that in which the exchange of the instruments of ratification takes place ; and

() in respect of other tax for taxation years beginning on or after the first day of January in the calendar year next following that in which the exchange of the instruments of ratification takes place;

Article 29. **【Termination】** [2002.03.30]

This Convention shall remain into force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the fifth year following that in which the instruments of ratification have been exchanged, give to the other Contracting State , through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to

have effect:

a) in Korea :

() in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given ;and

() in respect of other taxes for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

b) in Austria :

() in respect of tax withheld at the source on amounts paid on or after the first day of January in the calendar year next following that in which the notice is given ; and

() in respect of other tax for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Protocol.

DONE in duplicate in Seoul on the 28th day of May 2001, in the English language.

FOR THE REPUBLIC OF KOREA

FOR THE REPUBLIC OF AUSTRIA

[1987.12.1]

PROTOCOL

At the moment of signing the Convention between the Republic of Korea and the Republic of Austria for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed upon the following provisions shall form an integral part of the Convention.

1. In respect of subparagraph (a) of paragraph 3 of Article 2 of the Convention, it is understood that the Convention shall apply to the Korean defense tax where charged by reference to the income tax or the corporation tax.

2. In respect of paragraph 1 of Article 8, profits from the operation of vessels engaged in fishing, dredging or hauling activities shall be treated as income falling under this paragraph.

IN WITNESS WHEREOF, the undersigned have signed this Protocol which shall have the same force and validity as if it were inserted word by word in the Convention

DONE in duplicate at this..... day of..... of the year one thousand nine hundred and eighty-..... in the English language.

FOR THE REPUBLIC OF KOREA

FOR THE REPUBLIC OF AUSTRIA
